

We have adopted the rule of strict construction because section 93(2) necessarily affects the legal rights of inheritance and succession of the lawful wife and children of a man who has children from a "void marriage". We agree with the opinion expressed by the trial judge that the legislature, having abolished by the Women's Charter the institution of polygamy, except for those practising the Muslim religion, could not have intended to include the concept of a Chinese secondary marriage in the expression "void marriage".

For all these reasons we would dismiss the appeal.

Appeal dismissed.

Solicitors: *Director of Legal Aid; Ng & Ng.*

**WONG YAN MOK v.
INDO-MALAYA TRADING CO.**

[O.C.J. (Winslow J.) February 10, 1975]
[Singapore — Suit No. 161 of 1973]

Contract — Contract made by agent on behalf of disclosed principal — Whether agent liable.

The plaintiff claimed damages for breach of contract on an alleged failure of the defendant to supply the plaintiff with 300 bales of cotton. The facts as found by the court showed that the defendants had placed the order for the goods on behalf of Sultan Textile Mills (Karachi) Ltd. of Karachi, Pakistan, a named foreign principal of the defendants.

Held: in the circumstances, there was privity of contract between the plaintiff and the foreign principal and therefore the defendants were not liable on the contract.

Case referred to:-

- (1) *Miller, Gibb & Co. v. Smith & Tyrer Ltd.* [1917] 2 K.B. 141.

SUIT.

Cheng Tim Pin for the plaintiff.

Kirpal Singh for the defendants.

Winslow J.: The plaintiff's claim is for damages for breach of contract on an alleged failure on the part of the defendants to supply the plaintiff with 300 bales of cotton yarn at the rate of 100 bales per month in the latter part of 1972.

I am satisfied in all the surrounding circumstances relating to the conclusion of the contract in question, Ex. D4, which founds the plaintiff's claim that this contract was entered into between the plaintiff as buyers and Sultan Textile Mills (Karachi) Ltd. of Karachi (a named foreign principal of the defendants) as sellers and that 300 bales of cotton yarn were ordered by the plaintiff on 4th September, 1972 on the terms and conditions "stated below and overleaf" as mentioned on the front page of this contract. It is clear too from Ex. D5 which I find that the plaintiff signed or caused to be signed on his behalf by his daughter (PW2) on 5th or 6th September 1972 that the plaintiff was the buyer of the said goods as confirmed by the sellers in Pakistan as per cable at Ex. D6 which the defendant showed the plaintiff on 1st September 1972. I accept the evidence of B. Dass for the de-

fendants in this respect as well as on all disputed matters and reject that of the plaintiff and his witness.

I find that it must have been quite clear to the plaintiff that the defendants were placing the order for the goods in question on behalf of Sultan Textile Mills (Karachi) Ltd. and that the contract by its terms and conditions "stated below and overleaf" as mentioned on the front of Ex. D4 includes a statement to the effect that goods were subject to final confirmation by "our Principals", obviously meaning the named principals of the defendants. Such confirmation had already arrived and been seen by the plaintiff (Ex. D6) before the contract was signed by the plaintiff and this, I find, was the reason why the words "subject to final confirmation from the suppliers" were deleted from the front of the contract and not because the plaintiff wanted to make the defendants liable as principals themselves. I reject his version that the plaintiff had lost confidence in Pakistan mills generally and did not want goods from Pakistan. The only previous contract which the plaintiff had with a seller in Pakistan (see Ex. D3), through the defendants as agents for those principals in Pakistan, had been successfully performed and delivery had taken place and the obligations of the seller fulfilled as promised.

The plaintiff and his witness PW2 are father and daughter. The daughter knows more English than she cares to admit and I am satisfied that she and her father understood the documents in question. DW1 (Dass) was a straightforward witness who carried conviction as to the truth of all that he said — which is more than I can say about the plaintiff and his witness.

Paragraph 518 at page 230 of *Halsbury's Laws of England* Vol. 1 states,

"Where a person in making a contract discloses both the existence and the name of a principal on whose behalf he purports to make it, he is not, as a general rule, liable on the contract to the other contracting party, whether he had in fact authority to make it or not; but a personal liability may be imposed upon him by the express terms of the contract, by the ordinary course of business, or by usage. In particular when an agent makes a contract on behalf of a foreign principal, there is a presumption based upon the custom of merchants that the agent has no authority to pledge the credit of the foreign principal so as to establish privity of contract between the foreign principal and the third party, and that the agent, although he discloses the name of the principal, contracts personally, unless a contrary intention appears from the contract itself or from the attendant circumstances. But where the foreign principal is brought into privity of contract the presumption does not operate so as to render the agent liable as well as the principal."

The presumption as to custom or usage referred to was originally stated by Blackburn J. in 1872 but his observations have lost their force in relation to situations where the foreign principal is not the buyer but only the seller. There was no question of pledging the credit of the foreign principal by the defendants as agents in Singapore of that foreign principal. Actually, the opposite took place. A Letter of Credit was established by the plaintiff as buyer in favour of the foreign principal in Karachi. Even if any presumption arises, I find that it has been amply rebutted by the contract itself and the attendant circumstances which clearly establish privity of contract between the plaintiff and Sultan Textile Mills (Karachi) Ltd. in Pakistan. (See *Miller, Gibb & Co. v. Smith & Tyrer, Ltd.*)⁽¹⁾

I am also of the view that any argument based on confirming houses and the cases cited by the plaintiff on the position of confirming houses in relation to principals abroad has little or no relevance here because the defendants were not acting as a "confirming house" nor were they acting for any seller in Singapore.

For all these reasons, I would dismiss the plaintiff's claim with costs.

Claim dismissed.

Solicitors: *Yap & Yap; Mallal & Namazie.*

A MALAYSIAN REPORTS

UNITED MALAYAN BANKING CORPORATION BHD. v. LIEW YONG

[A.C.J. (Wan Hamzah J.) March 22, 1974]

[Ipoh — Civil Suit No. 56 of 1973]

B *Banking — Cheque drawn in excess of amount standing to credit of customer — Cheque honoured by bank — Customer deemed to request loan from bank — Bank giving loan to customer.*

In this case the plaintiff issued a specially indorsed writ claiming the sum of \$18,472.89 being the debit balance of the defendant's bank account with them. The plaintiff applied for leave to sign final judgment. The defendant alleged that there was no agreement at any time between him and the plaintiff whereby the plaintiff would lend him money nor did he ever request the plaintiff for a loan. He alleged that the plaintiff acted negligently and without his authority in debiting his account. The defendant had issued a cheque for an amount exceeding the amount standing to his credit and this had been honoured by the plaintiff. The Senior Assistant Registrar had dismissed the application of the plaintiff and given leave to the defendant to defend the action. The plaintiff appealed.

D *Held*, allowing the appeal: the defendant in drawing the cheque in excess of the true amount standing to his credit was in fact requesting a loan from the plaintiff and in honouring that cheque the plaintiff was in fact giving a loan to the defendant. Therefore on the undisputed facts, the defendant had no defence to the claim and judgment must therefore be given for the plaintiff.

Cases referred to:-

- E**
- (1) *Cuthbert v. Robarts, Lubbock & Co.* [1909] 2 Ch. 226, 233.
 - (2) *Cunliffe Brooks & Co. v. The Blackburn and District Benefit Building Society* (1883-4) 9 App. Cas. 857, 864.
 - (3) *Gordon v. London, City and Midland Bank, Gordon v. Capital and Counties Bank Ltd.* [1902] 1 K.B. 242, 283.

F CIVIL SUIT.

Yeap Eng Kooi for the plaintiff.

W. E. Balasingam for the defendant.

G **Wan Hamzah J.:** The plaintiff's claim in his specially indorsed writ is for a sum of \$18,472.89 being balance of the defendant's banking account as at 14 February 1973, and interest thereon at 12% per annum from 15 February 1973 to date of judgment and at 6% per annum thereafter to date of realisation. The basis of the claim as stated in the Statement of Claim is that the sum is "money payable by the defendant to the plaintiff for money lent to the defendant and for money paid to the defendant by the plaintiff's Ipoh branch as banker for the defendant at his request and for interest upon money due from the defendant to the plaintiff currently at the rate of 12% per annum with monthly rests and foreborne at interest by the plaintiff to the defendant at his request and for bank charges."

H The plaintiff applied in Chambers for leave to sign final judgment. The defendant opposed the application, and the Senior Assistant Registrar dismissed the application and granted the defendant unconditional leave to defend. The plaintiff appeals against the Senior Assistant Registrar's decision.

The following facts stated in this paragraph are not disputed by the parties. On 14 December 1972 the defendant requested the plaintiff to open a current